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REMARKS

The above listed claim amendments along with the following remarks are fully responsive to the Office Action set forth above. In that Office Action, the Examiner rejected claims 28-43. By this Amendment, the Applicant hereby submits terminal disclaimers to obviate rejections on the ground of nonstatutory obviousness-type double patenting. Additionally, Claims 28, 35, and 36 have been amended to more particularly point out and distinctly claim the subject matter of the present invention. No new matter has been added. Claims 28-43 are currently pending.

Double Patenting

The Examiner rejected claims 28-43 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over certain claims of U.S. Patent Nos. 6,544,168, 6,375,608, 6,165,122, 6,077,218, 5,702,343, 6,126,590, and 6,165,121. Additionally, the Examiner has provisionally rejected claims 28-43 on the ground of non-statutory obviousness-type double patenting as being unpatentable over certain claims of co-pending U.S. Patent Application Nos. 10/668,528, 10/661,918, and 10/810,099. The Applicant traverses the double-patenting rejections by submitting herewith terminal disclaimers relating to each of the above-identified U.S. patents and applications. Withdrawal of the rejections on the ground of non-statutory obviousness-type double patenting is respectfully requested.

Claim Rejections – 35 USC § 102

Claims 28-43 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,508,756 (“Kung”). The Kung patent discloses, in relevant part, a “girdle” made up of interlinked plastic rings, the purpose of which is to “limit the maximum diastolic dimension of the heart, while offering no resistance to systolic ejection.” See Col. 19, ll. 15-25. The rings “are free to move in all directions without restraint, since none are physically connected to each other.” See Col. 19, ll. 25-27.

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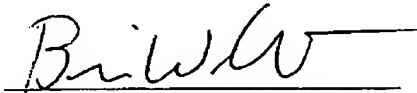
In contrast, claims 28 and 35 as amended recite, in part, an apparatus comprising a cone-shaped jacket of flexible, open cell material, for exerting a variable amount of pressure on the heart as a function of an amount of dilation of the heart. This variable pressure advantageously has the effect of reducing cardiac dilation to a certain point and then stopping because the surface pressure drops to a negligible amount. The foregoing is neither taught nor suggested by the Kung patent. To the contrary, in the Kung patent, as discussed above, the stated purpose of the net is to limit the maximum diastolic dimension of the heart, while offering no resistance to systolic ejection. Furthermore, the interlinked loops are free to move in all directions without restraint. Moreover, in the Kung patent, the change in heart surface area accompanying heart contraction is "readily accommodated by the free loops" of the girdle disclosed therein. Thus, the Kung patent does not disclose or fairly suggest a jacket for exerting a variable pressure on the heart as a function of an amount of dilation of the heart, as recited in claims 28 and 35 as amended.

Accordingly, claims 28 and 35 as amended are believed to be patentable over the teachings of the Kung patent, and are believed to be in condition for allowance. Additionally, claims 29-34 and claims 36-43, which depend from claims 28 and 35, respectively, are also patentable over the Kung patent and in condition for allowance for at least the same reasons. The Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(e).

A Notice of Allowance is respectfully requested in this case.

Respectfully Submitted,

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